No. 86-337

In the Supreme Court of the United States

OCTOBER TERM, 1986

BURLINGTON NORTHERN RAILROAD COMPANY, PETITIONER

v.

OKLAHOMA TAX COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether, in a case alleging that a state has overvalued railroad property for ad valorem property tax purposes, the prohibition against discriminatory state taxation of railroads in Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 11503, is limited to purposeful overvaluation with discriminatory intent.

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INTEREST OF THE UNITED STATES

This case concerns the scope of federal court jurisdiction to enjoin discriminatory state taxation of railroads under Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Pub. L. No. 94-210, 90 Stat. 54 (codified at 49 U.S.C. 11503). The 4R Act sets out a comprehensive framework for revitalizing the Nation's railroads. Section 306 is an integral part of this national transportation policy and is intended to protect interstate rail commerce from the burdens of discriminatory state taxation. The United States has a strong interest in preserving the federal courts' power to enforce these statutory protections. This Court on a previous occasion has invited the United States to express its views on the question presented. See U.S. Amicus Br., *Burlington N. RR.* v. *Lennen*, No. 83-802, cert. denied, 467 U.S. 1230 (1984) (U.S. *Lennen* Br.).

STATEMENT

1. Section 306 of the 4R Act prohibits, and vests federal district courts with jurisdiction to enjoin, discriminatory state taxation of railroads. The 4R Act as a whole sets out a comprehensive congressional response to the economic deterioration of the rail industry. Section 306 focuses on discriminatory state taxation as a particular cause of that decline. See, *e.g.*, H.R. Rep. 94-725, 94th Cong., 1st Sess. 78 (1975). After 15 years of study, Congress found that excessive state taxation "constitute[s] an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce" (§ 306(1), 90 Stat. 54). Accordingly, in the exercise of its plenary power to protect the channels of interstate commerce, Congress carved out an exception to the Tax Injunction Act, 28 U.S.C. 1341, and empowered federal courts to enjoin prohibited forms of discriminatory state taxation.

Section 306 broadly prohibits a state from imposing any tax that "results in discriminatory treatment of a common carrier by railroad" (§ 306(1)(d), 90 Stat. 54).[1] With respect to tax rates, the statute forbids a state or political subdivision to levy or collect an ad valorem tax on railroad property at a rate that exceeds the rate generally applicable to commercial and industrial property in the same jurisdiction (§ 306(1)(c), 90 Stat.

[1] This statutory language, along with certain other statutory provisions, was altered slightly when Section 306, originally codified at 49 U.S.C. (1976 ed.) 26c, was recodified in 1978 at 49 U.S.C. 11503. See Act of Oct. 17, 1978, Pub. L. No. 95-473, 92 Stat. 1337 *et seq.* The changes effected by the 1978 recodification were made solely "for clarity" (see 49 U.S.C. 11503 (historical and revision notes)) and "may not be construed as making a substantive change in the laws replaced" (Pub. L. No. 95-473, § 3(a), 92 Stat. 1466). Although there is thus no substantive difference between the original and recodified versions of the statute, it has become customary to refer to it by citing the relevant subsections of Section 306, and we will follow that practice here.

54). With respect to tax assessments (and taxes levied or collected on the basis of such assessments), the statute requires that a state's assessment practices be tested by a simple comparison of two arithmetic ratios. Under that test, a state's assessment practices are unlawfully discriminatory if the ratio of assessed value to true market value (referred to as the "assessment ratio") for railroad property exceeds the assessment ratio for "all other commercial and industrial property" (§ 306(1)(a) and (b), 90 Stat. 54).

In proceedings brought under Section 306, "the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law" (§ 306(2)(d), 90 Stat. 55). The statute also provides that the assessment ratio for non-railroad commercial and industrial property may be established "through the random-sampling method known as a sales assessment ratio study" (§ 306(2)(e), 90 Stat. 55).[2] If the assessment ratio for non-railroad property cannot be satisfactorily established by that method, the court must base its comparison on the assessment ratio for "all other [non-exempt] property in the assessment jurisdiction," not just for commercial and industrial property (*ibid.*).

A federal court that finds state property tax assessments to discriminate against railroads is empowered to enjoin the violation. The statute provides (§ 306(2), 90 Stat. 54):

> Notwithstanding any provision of section 1341 of title 28 [United States Code, the Tax Injunction Act], or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such

[2] A "sales assessment ratio study" compares the assessed value to the actual sale price for a representative and statistically valid sample of property within the assessment jurisdiction. See International Association of Assessing Officers, *Improving Real Property Assessment* 122-155 (1978).

> mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section * * *.

The scope of this equitable jurisdiction is limited by the provisions (described above) defining the burden and manner of proving the "assessment ratio." See § 306 (2) (d) and (e), 90 Stat. 55. The scope of the court's jurisdiction is also limited in two other respects. State taxing authorities were given a grace period of three years following enactment—that is, until February 5, 1979—before Section 306 took effect (§ 306(2) (b), 90 Stat. 54). And a district court is barred from granting any relief under Section 30€ unless the railroad proves that the assessment ratio for its property exceeds the assessment ratio for other commercial and industrial property by at least 5% (§ 306(2) (c), 90 Stat. 54).

The courts of appeals have unanimously concluded that Section 306 prohibits both de jure and de facto discrimination. See *Atchison, T. & S.F. Ry.* v. *Board of Equalization*, 795 F.2d 1442 (9th Cir. 1986); *Richmond, F. & P. R.R.* v. *Department of Taxation*, 762 F.2d 375, 379 (4th Cir. 1985); *Louisville & N. R.R.* v. *Department of Revenue*, 736 F.2d 1495, 1498 (11th Cir. 1984); *Burlington N. R.R.* v. *Lennen*, 715 F.2d 494, 497 (10th Cir. 1983), cert. denied, 467 U.S. 1230 (1984); *Ogilvie* v. *State Bd. of Equalization*, 657 F.2d 204, 210 (8th Cir.), cert. denied, 454 U.S. 1086 (1981). De jure discrimination occurs when state laws apply a different tax rate or a different assessment percentage to railroad property than they apply to other commercial and industrial property. De facto discrimination occurs when the tax rates and assessment percentages are nominally the same but produce disparate results, in that the "assessment ratios" for railroad and non-railroad property are different.[3]

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[3] States typically calculate assessed value (the numerator in the "assessment ratio") as a percentage of true market value (the denominator in the "assessment ratio"). If a state has accurately calculated true market value, this assessment percentage will obviously be the same as the "assessment ratio" independently determined in court. These two figures will differ when the market value declared by the state is not the true market value.

De facto discrimination may arise in two ways. A state may underestimate the true market value of non-railroad property, without equivalently underestimating the true market value of railroad property. Alternatively, the state may overestimate the true market value of railroad property, without equivalently overestimating the true market value of non-railroad property. In either event, the "assessment ratios" for railroad and non-railroad property will differ, in violation of Section 306(1) (a). A railroad's claim of the first type of de facto discrimination has been termed by the courts a claim for "equalization" relief. A railroad's claim of the second type of de facto discrimination has been termed a claim for "valuation" relief. See, *e.g.*, Pet. App. 2a; *Burlington N. R.R.* v. *Lennen*, 715 F.2d at 496, 497. We find this terminology confusing, and will generally refer in this brief to "undervaluation" and "overvaluation" claims, respectively.

2. This case involves an overvaluation claim. Petitioner, a rail carrier, brought this action in the United States District Court for the Western District of Oklahoma to enjoin the Oklahoma Tax Commission from collecting ad valorem property taxes alleged to be excessive and discriminatory under Section 306.[4] Petitioner asserted that Oklahoma tax authorities had so drastically overestimated the market value of its transportation property that the assessment ratio for its property was far in excess of the ratio for non-railroad property (Pet. App. 31a-32a).

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[4] Petitioner has also challenged the tax assessment pursuant to procedures made available under Oklahoma law. See Okla. Stat. Ann. tit. 68, §§ 2465-2468 (West 1966 & Supp. 1985). We understand that those administrative proceedings are currently pending.

The district court, though acknowledging that "the [respondents] themselves admit the existence of a legitimate valuation dispute between the parties," concluded that it lacked jurisdiction to entertain petitioner's claim of discriminatory overvaluation (Pet. App. 16a). In so ruling, the district court relied on the Tenth Circuit's earlier decision in *Burlington N. R.R.* v. *Lennen*, 715 F.2d at 497-498. In *Lennen*, the Tenth Circuit held that Section 306 was not "intended to provide relief from every form of de facto discrimination" and that only "equalization, not valuation, relief was intended to be made available to the railroads" (*ibid.*). The court noted that Section 306(2)(e) specifies statistical random sampling as a permissible method for determining the true market value of non-railroad property, whereas the statute "contains no discussion of a proper method for valuing rail property"; the Tenth Circuit inferred from this silence a legislative intent that courts should refrain from taking jurisdiction of a railroad's claim that its property had been overvalued (715 F.2d at 497). The Tenth Circuit in *Lennen* also reasoned that, if Section 306 were construed to permit railroads to bring federal court challenges to the states' computation of railroad property's market value, that construction "would impose significant burdens on district courts and would substantially thwart the tax collection process of states and their subdivisions" (715 F.2d at 498). The *Lennen* court ultimately held that Section 306 affords no relief from discriminatory overvaluation of railroad property unless the complaining railroad "can make a strong showing of a purposeful overvaluation * * * with discriminatory intent" (715 F.2d at 498).

Turning to the facts of the instant case, the district court held that it was "without jurisdiction to entertain [petitioner's] *de facto* discrimination claims of overvaluation" (Pet. App. 16a). The court stated that the jurisdictional issue of discriminatory intent had to be "resolved prior to trial" (*id.* at 12a) and that petitioner's

pre-trial filings therefore had to "make the requisite 'strong prima facie case of * * * intentional discrimination'" (*ibid.* (quoting *Lennen*, 715 F.2d at 498)). The court concluded that petitioner had not made the necessary showing of discriminatory intent (Pet. App. 14a-16a) and accordingly "dismissed for lack of subject matter jurisdiction" (*id.* at 16a-17a).

On appeal, petitioner first sought en banc review of the district court's decision, arguing that the Tenth Circuit should overrule *Lennen*. The United States filed a brief amicus curiae in support of that request. We noted that the Eighth Circuit's decision in *Burlington N. R.R.* v. *Bair*, 766 F.2d 1222 (1985), conflicted with the ruling in *Lennen* and that the issue was of considerable importance to national transportation policy.

The Tenth Circuit rejected petitioner's request for en banc review and thereby declined to reconsider *Lennen* (Pet. App. 19a). A panel of the Tenth Circuit subsequently heard petitioner's appeal and affirmed the district court's conclusion that *Lennen* compelled dismissal of the instant suit for lack of subject matter jurisdiction. The panel first reaffirmed the soundness of *Lennen*, reiterating the concern expressed in the earlier case that federal courts should not be asked to "'sit as state tax assessment boards for railroad property'" (Pet. App. 2a-3a (quoting *Lennen*, 715 F.2d at 498)). The court then agreed with the district court that petitioner had "failed to establish a strong initial showing of [a] prima facie case of intentional discrimination" (Pet. App. 3a). The court reasoned that petitioner had failed to allege that Oklahoma revenue officials had made "remarks regarding an intent to discriminate in valuation" (*ibid.*), had failed to allege any valuation procedure that was discriminatory "on its face" (*id.* at 3a-4a), and had failed to allege "facts from which a trier of fact reasonably could infer discriminatory intent, such as assessments based on flat rates that take no account of an item's value, assessments that ignore changed business conditions, or unexplained

radical changes in the methods for calculating value" (*id.* at 4a).

SUMMARY OF ARGUMENT

The plain language of the 4R Act bars any state law or practice that compels a railroad to pay a disproportionate share of property taxes. The statute defines the prohibited discrimination in purely arithmetic terms, and neither the statutory language nor the legislative history furnishes any support for the Tenth Circuit's requirement that a railroad complaining of discriminatory overvaluation of its property show purposeful overvaluation with discriminatory intent. Indeed, an intent requirement would frustrate Congress's clear purpose—to provide a remedy for all forms of discriminatory state taxation and thus alleviate the crippling economic burden that such taxation had placed on railroads.

The purpose of Section 306 would likewise be frustrated, and the language of the statute rather egregiously rewritten, by the Tenth Circuit's holding that a federal court may not look behind a state's determination of the true market value of railroad property. Treating the state determination as conclusive would deprive the court of the power to scrutinize an assessment for discrimination. Since state property tax assessments are based on the valuation of property, a court cannot measure state taxation against the statutory standards without independently determining the true market value of railroad property. The legislative history makes it plain that Congress understood the necessity of this inquiry, and the statute therefore provides that true market value is an element to be proved by the plaintiff, and adjudicated by the court, in a de facto discrimination suit under Section 306.

The Tenth Circuit invented its "discriminatory intent" requirement, and conversely sought to restrict judicial inquiry into the market value of railroad property, out of concern with overburdening the federal courts and with intruding upon state tax administration. These concerns are misplaced. Congress took these matters into account when enacting Section 306 and decided, because of the inadequacies of existing state remedies for discriminatory taxation, to create under its Commerce Power an extraordinary exception to the Tax Injunction Act. It is not for the courts to disrupt the congressional balance between federal and state interests, as long as the balance that Congress has struck is authorized by the Constitution. In any event, the statute itself limits the intrusion on state government and the burden on federal courts. An erroneous valuation of railroad property is not, by itself, a ground for bringing suit under the statute; rather, *discrimination* against the railroad must be proved to make out a violation, and only if the disparity exceeds a 5% margin is judicial relief available. Thus, contrary to the Tenth Circuit's view (*Lennen*, 715 F.2d at 498), giving the statute its plain meaning will not require the federal courts to "sit as state tax assessment boards for railroad property."

ARGUMENT

I. SECTION 306 BARS ANY STATE PROPERTY TAX THAT DISCRIMINATES AGAINST RAILROADS, WITHOUT REGARD TO THE STATE'S INTENT

The Tenth Circuit's requirement that a railroad claiming discriminatory overvaluation prove discriminatory intent is contrary to the plain language of Section 306. The catch-all provision of Section 306, as the original statutory language makes plain, prohibits "*any* * * * tax which *results in* discriminatory treatment of a common carrier by railroad" (§ 306(1)(d), 90 Stat. 54 (emphasis added)).[5] Section 306(1)(c), which concerns tax rates,

[5] The courts of appeals have construed Section 306(1)(d) as prohibiting tax discrimination in any form whatsoever. See, *e.g.*, *Alabama G. S. R.R.* v. *Eagerton*, 663 F.2d 1036, 1040 (11th Cir. 1981) (state license tax); *Richmond, F. & P. R.R.* v. *Department of Taxation*, 762 F.2d 375 (4th Cir. 1985) (corporate income tax);

prohibits the taxation of railroad property "at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction" (90 Stat. 54); a state's "intent" in taxing a railroad at a higher rate is obviously irrelevant under that subsection. Section 306(1)(a) defines its prohibition against discriminatory assessments in terms of a simple arithmetic ratio of assessed value to true market value, and that definition likewise makes irrelevant any consideration of discriminatory intent. In short, the statute makes no reference to discriminatory intent; it focuses solely on the *results* of state taxing practices.

The legislative history [6] is devoid of any indication that the "discriminatory treatment" standard set out in the statute was meant to incorporate a threshold requirement of discriminatory intent. Rather, the legislative history confirms that Congress's clear purpose was to relieve the "undue burden" (§ 306(1), 90 Stat. 54) that discriminatory taxation placed on railroads in interstate commerce. Congress found in 1969 that discriminatory taxation "de-

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see also *Atchison, T. & S.F. Ry.* v. *Bair*, 338 N.W.2d 338, 344 (Iowa 1983) (en banc), cert. denied, 465 U.S. 1071 (1984) (fuel consumption excise tax).

[6] Before enacting Section 306, Congress considered a number of similar proposals to bar discriminatory taxation of carriers operating in interstate commerce. See S. Rep. 445, 87th Cong., 1st Sess. 465 (1961); *Tax Assessments on Common Carrier Property: Hearing on H.R. 736 & H.R. 10169 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 88th Cong., 2d Sess. 2 (1964) [hereinafter cited as *Hearing on H.R. 736 & H.R. 10169*]; *Tax Assessments on Common Carrier Property: Hearings on H.R. 4972 Before the House Comm. on Interstate and Foreign Commerce*, 89th Cong., 2d Sess. 1 (1966); S. Rep. 1483, 90th Cong., 2d Sess. 9 (1968); S. Rep. 91-630, 91st Cong., 1st Sess. 10 (1969); S. Rep. 92-1085, 92d Cong., 2d Sess. 2 (1972). Because these prior proposals closely resemble Section 306, the courts of appeals have correctly considered the related congressional hearings and reports as evidence of Congress's intent in enacting Section 306. See, *e.g.*, *Arizona* v. *Atchison, T. & S.F. R.R.*, 656 F.2d 398, 404 n.6 (9th Cir. 1981); *Lennen*, 715 F.2d at 497-498.

prive[s] * * * a carrier of revenues needed in the performance of its services in interstate commerce" (S. Rep. 91-630, 91st Cong., 1st Sess. 9 (1969)). After further study, Congress concluded (H.R. Rep. 94-725, 94th Cong., 1st Sess. 78 (1975)):

> [R]ailroads are over-taxed by at least $50 million each year. In view of the generally poor economic condition of the railroad industry and the effect such economic hardship is having on the ability of the industry to adequately serve our national rail transportation needs, the Committee [on Interstate and Foreign Commerce] believes discriminatory property and "in lieu" taxation should be ended.

Section 306 was accordingly enacted "to eliminate the long-standing burden on interstate commerce resulting from discriminatory State and local taxation of common and contract carrier transportation property" and to end "the discriminatory tax practices weakening our national transportation system" (S. Rep. 91-630, *supra*, at 1, 3).

The intent behind a discriminatory state tax on railroads is clearly irrelevant in light of this congressional objective. The burden on railroads is the same regardless of the taxing authority's intent. An intent requirement would thus directly undermine the statutory goal by exempting from the bar of Section 306 a large class of discriminatory and economically burdensome taxation that Congress intended to eliminate. In short, Section 306, written without reference to discriminatory intent and concerned only with the effects of taxation, cannot require proof of discriminatory intent as a prerequisite to relief.

This plain-meaning construction of Section 306 is bolstered by parallels to similar prohibitions in other laws. First, there is no intent requirement in the prohibitions on discriminatory taxation, modeled on Section 306, that Congress subsequently enacted for motor carriers, buses,

and air carriers.[7] Nor was there an intent requirement under the anti-discrimination prohibition of former Section 13(4) of the Interstate Commerce Act, 49 U.S.C. (1976 ed.) 13(4). See, *e.g.*, *Illinois Commerce Comm'n* v. *United States*, 292 U.S. 474, 484 (1934). Finally, a simple "effects" reading of Section 306 is supported by this Court's decisions defining the constitutional prohibitions on state taxes that discriminate against interstate commerce or federal property. In both of those areas, inequality of tax burdens is the focus of the prohibition, and this Court has therefore held that there is no need to prove discriminatory intent in order to obtain relief. *Bacchus Imports, Ltd.* v. *Dias*, 468 U.S. 263, 270-271 (1984); *Washington* v. *United States*, 460 U.S. 536, 544 (1983); *Memphis Bank & Trust Co.* v. *Garner*, 459 U.S. 392, 397 (1983); *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 471 n.15 (1981). Since Congress enacted Section 306 to give railroads *greater* protection than had been afforded to them under this Court's constitutional jurisprudence, it would be odd to read into Section 306 a burden-of-proof requirement that a railroad would be spared under the Commerce Clause. Every court of appeals that has addressed the question, apart from the Tenth Circuit, has thus concluded, correctly, that a "discriminatory intent" requirement has no place in interpreting Section 306.[8]

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[7] See Motor Carrier Act of 1980, Pub. L. No. 96-296, § 31, 94 Stat. 823 (codified at 49 U.S.C. 11503a); Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, § 20, 96 Stat. 1122 (likewise codified at 49 U.S.C. 11503a); Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248, § 532, 96 Stat. 701 (codified at 49 U.S.C. App. 1513(d)). The last-mentioned provisions respecting air carriers are at issue in *Western Air Lines, Inc.* v. *South Dakota Bd. of Equalization*, No. 85-732.

[8] See, *e.g.*, *Atchison, T. & S.F. Ry.* v. *Board of Equalization*, 795 F.2d at 1446 (Section 306 is intended to afford relief from every form of de facto discrimination regardless of intent); *Louisville & N. R.R.* v. *Department of Revenue*, 736 F.2d at 1498 (intent is not a precondition for relief once disparate impact is shown); *Trailer Train Co.* v. *State Bd. of Equalization*, 710 F.2d 468, 472 (8th Cir. 1983) (Section 306 bars taxation that results in discrimination); *Alabama G. S. R.R.* v. *Eagerton*, 663 F.2d at 1040 (Section 306 bars taxation that is discriminatory in effect).

II. SECTION 306 FORBIDS DISCRIMINATORY OVERVALUATION OF RAILROAD PROPERTY AND THUS OF NECESSITY REQUIRES FEDERAL COURTS TO MAKE AN INDEPENDENT DETERMINATION OF THE TRUE MARKET VALUE OF THAT PROPERTY

The Tenth Circuit devised its threshold test of "discriminatory intent" for Section 306 overvaluation claims in order to eliminate or reduce the need for federal court review of state determinations of the true market value of railroad property (Pet. App. 2a; *Lennen*, 715 F.2d at 497-498). Believing such a judicial inquiry into market value to be inappropriate and not intended by Congress, the court held that Section 306 permits railroads to bring *undervaluation* claims, which require review of the true market value of non-railroad property, but precludes them —absent a showing of discriminatory intent—from bringing *overvaluation* claims, which require review of the true market value of railroad property (*Lennen*, 715 F.2d at 497-498). This distinction, as well as the premise supporting it, is contrary to the language, history, and purposes of Section 306.

A. The statutory language itself calls for an independent federal inquiry into the true market value of railroad property. Section 306 makes "true market value" of railroad property an integral element of the statutory test for ascertaining whether state taxation is discriminatory. Indeed, insofar as de facto discrimination is concerned, this element determines the value of one of the two "assessment ratios" that must be compared in the test for unlawful discrimination. Nothing in the text or structure of the statute supports the extraordinary notion that a district court should be barred from making an independent finding on a critical factual element of the plaintiff's claim. The district court below acknowledged "the

existence of a legitimate valuation dispute between the parties" (Pet. App. 16a), and it would be contrary to all norms of judicial procedure to require a court to accept as true the defendant's determination of value even though it is contested by the plaintiff. In fact, Section 306(2)(d) clearly contemplates adjudication of this issue, specifying that "the burden of proof with respect to the determination of assessed value *and true market value* shall be that declared by the applicable State law" (emphasis added). Nothing in the statute suggests that this provision applies only to non-railroad property, and this reference clearly indicates Congress's understanding that questions of value *in general* would be subject to litigation in cases under Section 306.

The Tenth Circuit, observing that the statute (§ 306(2)(e), 90 Stat. 55) specifies certain methods for measuring the true market value of non-railroad property but does not specify methods for valuing railroad property (*Lennen*, 715 F.2d at 497), inferred from the statutory text that inquiry into the value of railroad property is barred. That inference is wholly unwarranted. In light of the obvious difficulty of directly measuring the true market value of every piece of taxable commercial and industrial property in a taxing jurisdiction, Congress sensibly specified that random-sampling techniques—such as a "sales assessment ratio study"—may be used to value non-railroad property. There was no comparable need to specify a method for establishing the value of railroad property, for railroad property can be valued without resort either to a laborious item-by-item cumulation or to averaging or random-sampling techniques. Indeed, Congress was well aware that states commonly value railroad property by the "unit method," a method that considers a railroad's total value, then allocates a share ratably to each state in which the railroad does business. See S. Rep. 91-630, *supra*, at 25-26; S. Rep. 1483, *supra*, at 22. Under the "unit method," obviously, there is no need to appraise each item of railroad property separately and

then aggregate the results. See, *e.g.*, *Union Tank Line Co.* v. *Wright*, 249 U.S. 275 (1919). Accordingly, there was especially little need for Congress to designate in Section 306 permissible methods for calculating the market value of a railroad's holdings in a state.

B. Like the statutory language, the legislative history of Section 306 contains no evidence that Congress intended to bar a federal court from looking behind state valuations of railroad property. Indeed, the contrary intent is implicit in Congress's recognition that railroads " 'are discriminated against as compared to other property taxpayers in the same jurisdiction, due in large measure to outdated procedures (which are sometimes deliberately retained) for assessment of property' " (S. Rep. 91-630, *supra*, at 2 (citation omitted)). Discriminatory assessments caused by "outdated procedures" could hardly be addressed without scrutiny of state valuations. Moreover, Congress contemplated that "true market value" was to be the standard to which state valuations would be compared in determining discrimination (*id.* at 25-26; S. Rep. 1483, *supra*, at 22; see page 18, *infra*). "True market value" would not be much of a litmus test if the state's own assertions as to true market value were dispositive.

Throughout the hearings leading up to the enactment of Section 306, state representatives repeatedly objected to an assessment-ratio test, like the one ultimately adopted by Congress, on the precise ground that it would require federal court review of state determinations of market value. For example, a spokesman for an organization of state taxing officials observed (*Discriminatory Taxation of Common Carriers: Hearings on S. 927 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 90th Cong., 1st Sess. 114 (1967) (statement of Charles F. Conlon) (emphasis in original)):

> If there is any question about the assessment ratio used by the state agency, then the reviewing agency —whether it be a board of tax appeals, a state court or a United States district court—must decide

> whether the property has been correctly valued in order to determine what percentage of that value is *actually* used for assessment purposes. This step is unavoidable in the circumstances.

Senator Lausche made a similar point in a dissenting statement attached to a key committee report. S. Rep. 1483, *supra*, at 26. Similarly, the Director of the Washington State Department of Revenue testified regarding proposed legislation setting forth an assessment ratio test (*State Tax Discrimination Against Interstate Carrier Property: Hearing on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 91st Cong., 1st Sess. 99 (1969) [hereinafter cited as *Hearing on S. 2289*] (statement of George Kinnear) (emphasis added)):

> [I]t would be immediately necessary * * * for federal courts to review and determine the correctness of not only *valuation procedures and the actual valuation results for the carriers*, but also *the entire work of each assessing agency with respect to all other properties*. Very simply, this would become necessary because the bill concerns itself with the ratio of assessed valuation of transportation property to the true market value of such property * * *.

To avoid this result, the State of Washington proposed an amendment that would have expressly foreclosed federal court review of true market value by defining the term to mean the "true market value finally determined in accordance with state statutory procedures" (*id.* at 102). This suggested amendment, which would have had precisely the same effect as the rule adopted by the Tenth Circuit, was never enacted.[9]

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[9] The legislative history is replete with testimony observing that an assessment-ratio test would require federal court review of the true market value determination. See, *e.g.*, *Hearing on H.R. 736 & H.R. 10169*, *supra*, at 2 (comments of Abe McGregor Goff, Chairman of the Interstate Commerce Commission); *Common and Contract Carrier State Property Tax Discrimination: Hearing on H.R. 16245, et al. Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess. 94 (1970) (statement of Charles Ottermann, Chief Counsel, Cal. State Bd. of Equalization); *Surface Transportation Legislation: Hearings on S. 2362, et al. Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 92d Cong., 1st Sess. 208-209 (1972) (testimony of Charles F. Conlon); *Hearing on S. 2289*, *supra*, at 59 (testimony of Broley E. Travis).

The Tenth Circuit relied in part (*Lennen*, 715 F.2d at 497-498) on certain statements in some early committee reports that the assessment-ratio test for discriminatory taxation was not intended to require states to change their assessment practices or standards and that true market value was "not a standard for determining value" (S. Rep. 91-630, *supra*, at 10, 25-26; S. Rep. 1483, *supra*, at 22-23). Those statements lend no support whatever to the Tenth Circuit's view. To begin with, Section 306 as enacted differs from, and places greater restrictions on states than, the legislation considered by Congress in 1968 and 1969, the time of the cited legislative history. In particular, Section 306, unlike the bills considered in earlier years, and contrary to statements in the committee reports to which the Tenth Circuit referred, *does require* changes in state assessment practices that treat different kinds of property differently. See pages 20-21, *infra*. Section 306, unlike the earlier bills, also contains a broad catch-all prohibition against "any other tax which results in discriminatory treatment of a common carrier by railroad" (§ 306(1)(d), 90 Stat. 54). Accordingly, even if the early legislative history were thought to suggest some limitation upon judicial authority to inquire into "true market value," that limitation would be of dubious relevance to the law as enacted.

In any event, the context of the statements shows that they in fact contain no such suggestion. The committee reports note that "true market value" is the objective goal at which assessors theoretically aim and that the "unit method" (see pages 14-15, *supra*) is used in most, though not all, states for valuing railroad property. The

reports then explain (S. Rep. 91-630, *supra*, at 25-26; S. Rep. 1483, *supra*, at 22) that the proposed legislation

> does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. It is not a standard for determining value; it is a standard to which values that have already been determined must be compared. This standard is "true market value" (also the generally accepted standard for assessment purposes) and the requirement is that carrier property be assessed at the same proportion of such value as the proportion at which all other property subject to the same tax rates is assessed.

Thus, "true market value" was not an assessment method or practice that the states were being required by Congress to adopt; states could use any method they liked as long as it did not result in discriminatory taxes. Rather, "true market value" was the standard to which state assessments were to be compared.[10] Since the standard of comparison must be independently determined before anything can be compared to it, this legislative history, far from interdicting judicial inquiry into market value, affirmatively requires it.

C. A bar on judicial inquiry into the market value of railroad property is not only unsupported in the language and legislative history of Section 306, but would gravely weaken the protections of the statute. As we have noted,

[10] In *Greene* v. *Louis & I. R.R.*, 244 U.S. 499 (1917), this Court drew an analogous distinction in interpreting state law provisions requiring uniform taxation. The Court noted that the state uniformity provisions did permit different modes of assessment (*id.* at 513), provided that the different methods employed resulted in equal tax burdens; the Court thus observed that "the principal if not the sole reason for adopting 'fair cash value' as the standard for valuations, is as a convenient means to an end—the end being equal taxation" (*id.* at 516).

the statute is intended to prohibit *all* discriminatory taxation of railroads, and it thus prohibits de facto as well as de jure discrimination (see S. Rep. 91-630, *supra*, at 3, 9 (discriminatory taxation forbidden whether by law, "practice, or otherwise"); see also S. Rep. 1483, *supra*, at 8; 121 Cong. Rec. 41341 (1975) (Rep. Skubitz)). If a state's determination of true market value were regarded as conclusive, one of the two forms of de facto discrimination—discriminatory overvaluation of railroad property—would be excised from the coverage of the statute. As the Eighth Circuit observed, states would then "be free to discriminate against railroads by assessing a value far in excess of the true market value, while assessing all other property at true market value, and then asserting * * * that assessed value is always equal to true value" (*Burlington N. R.R.* v. *Bair*, 766 F.2d 1222, 1225-1226 (8th Cir. 1985)).

Congress plainly intended to eliminate tax discrimination against railroads whether effected by discriminatory overvaluation of railroad property or by discriminatory undervaluation of non-railroad property. While local tax assessors have an economic and political incentive to undervalue commercial and industrial property in order to lighten their constituents' tax burden (see 1 J. Bonbright, *The Valuation of Property* 498, 503 (1937) (state boards of equalization created to redress this problem)), state tax assessors have an equally strong, though different, incentive to overvalue railroad property. Congress itself recognized (S. Rep. 92-1085, 92d Cong., 2d Sess. 4 (1972)) that

> [r]egulated interstate carriers, especially railroads, are easy prey for State and local tax assessors. They are non-voting, often non-resident, targets for local taxation, and cannot remove their rights-of-way and terminals even if the burden of tax discrimination becomes heavy. Their statutory obligation as regulated common carriers further roots them to their location since they are obliged to provide service to the locality.

Thus, Congress was centrally concerned with railroads' vulnerability to burdensome overvaluation of their property, an evil that Congress specifically identified as one form of prohibited discrimination (H.R. Rep. 94-725, *supra*, at 113). The Tenth Circuit's rule barring full and independent adjudication of railroads' overvaluation claims would be squarely contrary to this congressional intent.

III. A JUDICIAL NARROWING OF SECTION 306 CANNOT BE JUSTIFIED ON THE THEORY THAT THE STATUTE AS WRITTEN UNREASONABLY INTERFERES WITH STATE TAX COLLECTION OR UNDULY BURDENS FEDERAL COURTS

The Tenth Circuit rejected the plain meaning of Section 306 out of concern that federal court jurisdiction of overvaluation claims would "impose significant burdens on district courts and would substantially thwart the tax collection process of states and their subdivisions" (*Lennen*, 715 F.2d at 498). Given Congress's purpose in enacting the statute, these concerns are both improper as a basis of statutory construction and, in any event, exaggerated. The task of accommodating state interests is, within the terms set by the Constitution, one for Congress, not for the courts, and Congress enacted into law a deliberately unusual although constitutionally valid balance of federal and state interests, a balance that differs from that prevalent in the field of state taxation generally. Moreover, the Tenth Circuit vastly overestimated the actual burden that is imposed on federal courts and state tax collection processes by permitting railroads to prove discriminatory overvaluation of their property without proving discriminatory intent.

A. In enacting Section 306, Congress exercised its Commerce Power to "interfere" with state tax administration in several carefully considered—and relatively modest—ways. Substantively, the statute set a new standard of non-discrimination limiting state tax practices. This new standard required states to cease applying different assessment percentages or tax rates to different classes of property—even though such differential treatment might be allowable under state law—if that practice would result in discrimination against railroad property. Thus, whereas the Senate version of Section 306 in the 94th Congress would have permitted differential classification of property for state tax purposes if such classifications were set forth in the state constitution, the Conference bill deleted that provision (S. Rep. 94-595, 94th Cong., 2d Sess. 166 (1976)). Section 306 as enacted therefore requires comparison of the assessment ratio for railroad property to the assessment ratio for *all* other commercial and industrial property in the taxing jurisdiction.[11]

In addition to these substantive effects upon state taxing authority, Section 306 provides for an exception —one of the few such exceptions found in the United States Code—to the Tax Injunction Act, 28 U.S.C. 1341. That Act is "first and foremost a vehicle to limit drastically federal district court jurisdiction to interefere with so important a local concern as the collection of taxes." *Rosewell* v. *LaSalle National Bank*, 450 U.S. 503, 522 (1981). The Tax Injunction Act thus embodied Congress's decision "to transfer jurisdiction over a class of substantive federal claims from the federal district courts to the state courts, as long as state-court procedures were

[11] The "interference" in state taxing authority worked by the Conference Committee's action is evident in this case. Oklahoma law permits public service corporations, including railroads, to be singled out for different tax treatment (Okla. Stat. Ann. tit. 68, § 2442 (West 1966 & Supp. 1985)) and under Oklahoma law " 'it is not necessary that the property of public service corporations be valued at the same percentage of actual value as that placed on other classes of property' " (*McLoud Telephone Co.* v. *State Bd. of Equalization*, 655 P.2d 1037, 1039 (Okla. 1982) (citation omitted)). Section 306 as enacted specifically displaces these provisions of Oklahoma law in circumstances where they would produce discrimination against railroad property.

'plain, speedy and efficient' and final review of the substantive federal claim could be obtained in this Court" (*id.* at 515 n.19).

Section 306, which removes the restraints of the Tax Injunction Act for railroads alleging discriminatory taxation, reflects a deliberate decision by Congress to transfer jurisdiction over such claims back to the federal district courts. Congress found that the Tax Injunction Act had "close[d] the doors of the Federal courts to carriers affected by discriminatory taxation" without ensuring that state remedies afforded adequate relief (S. Rep. 1483, *supra*, at 6). Witnesses testifying before Congress noted a number of deficiencies commonly found in existing state remedies, including the necessity of bringing multiple suits (one in each county or other taxing jurisdiction) to secure complete relief, the delay in obtaining a decision, the limited form of review available in state court, and the reluctance of state courts to overturn decisions of the assessing agency (*ibid.*). Congress concluded that a federal procedural remedy was necessary to vindicate the substantive rights that Section 306 created (S. Rep. 1483, *supra*, at 7). In authorizing the district courts to enforce a railroad's rights under Section 306 notwithstanding the Tax Injunction Act, Congress expressed its determination that any consequential intrusion on state tax collection was necessary to avoid demonstrable burdens on interstate commerce. See S. Rep. 1483, *supra*, at 11; see also S. Rep. 91-630, *supra*, at 6-7, 11; H.R. Rep. 94-725, *supra*, at 76-77.

The depth of Congress's concern to protect railroads from discriminatory taxing processes is also evident in the provision of the statute, as originally enacted (§ 306(1), 90 Stat. 54), stating that discriminatory taxation was prohibited notwithstanding former Section 202(b) of the Interstate Commerce Act, 49 U.S.C. (1976 ed.) 302(b). That section had declared that the Interstate Commerce Act generally should not be construed "to affect the powers of taxation of the several States" (49 U.S.C. (1976 ed.) 302(b)(1)). Section 306's exception to this limitation

reconfirms what the exception to the Tax Injunction Act already makes clear—that Congress plainly intended the unusual degree of interference with the ordinary administration of state property tax collection that Section 306 by its terms authorizes. See S. Rep. 91-630, *supra*, at 9; see also S. Rep. 92-1085, 92d Cong., 2d Sess. 6-8 (1972) (noting the opposition that had been voiced to "involving the Federal courts in State tax matters" and pointing out that Section 306 had been crafted so as to "interfere[] to the least extent possible with State taxing systems"). There being no constitutional objection to this clear congressional decision, the Tenth Circuit had no license to rewrite the statute to diminish its reach.

B. In any event, the statute is limited in several ways that greatly reduce the potential for interfering with state tax collection or burdening the federal courts with inappropriate tasks. First, by delaying the effective date of Section 306 for three years (§ 306(2)(b), 90 Stat. 54), Congress gave state and local governments an opportunity to adjust their tax practices to eliminate unlawful discrimination. See S. Rep. 1483, *supra*, at 13; see also *Railroad Revitalization: Hearings on H.R. 6351 and H.R. 7681 Before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce*, 94th Cong., 1st Sess. 162-163 (1975) (statement of William T. Coleman, Jr., Secretary of Transportation). Second, the statute prohibits a court from awarding relief unless the railroad's assessment ratio exceeds the ratio for non-railroad property by at least 5% (§ 306(2)(c), 90 Stat. 54). Given the magnitude of railroad property values, this 5% tolerance factor is a sizable margin of error, and it protects taxing jurisdictions from injunctions where uncertainties in the assessment process produce trivial variations in assessment ratios. See S. Rep. 91-630, *supra*, at 14-15.[12] Third, by

[12] It is noteworthy that the nondiscrimination provision governing air carriers (49 U.S.C. App. 1513(d)), which contains no exception to the Tax Injunction Act and hence does not permit suits

adopting state law regarding the burden of proof (§ 306(2)(d), 90 Stat. 55), the statute generally imposes the burden of proving assessment discrimination on the rail carriers. Any difficulties that attend proof of de facto discrimination must thus be surmounted initially by the railroad as part of its prima facie case. See S. Rep. 91-630, *supra*, at 15. Fourth, by prohibiting only that portion of a tax assessment determined to be excessive under the assessment-ratio test (§ 306(1)(a), 90 Stat. 54), and by leaving in place federal courts' ordinary equitable power to structure remedies so as to avoid unjustly burdening the litigants (H.R. Rep. 94-725, *supra*, at 78), the statute protects state tax collection to the maximum extent possible consisent with the need to eliminate unlawful discrimination.[13]

The Tenth Circuit's fear of federal court displacement of state taxing authority not only ignores the statutory limitations that we have just discussed but also, and more fundamentally, ignores the limitations inherent in Section 306's character as an *anti-discrimination* provision. An erroneous valuation of railroad property is not, in and of itself, a violation of the statute and will not support a suit under Section 306. Thus, if a state overvalues rail-

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to be brought in federal court, contains no "de minimis" rule analogous to the 5% margin of error set forth in Section 306(2)(c).

[13] Congress intended district courts to enjoin only the discriminatory portion of a state tax, thus leaving states free to collect the balance of the tax (S. Rep. 91-630, *supra*, at 13). Because Section 306 sets forth a clear definition of what portion of a tax is valid, requires no assessment or levy by the federal courts, and expressly provides for the injunctive remedy, Congress believed that Section 306 was compatible with *Moses Lake Homes, Inc.* v. *Grant County*, 365 U.S. 744, 751-752 (1961), which held that a federal district court may not remedy an unconstitutionally discriminatory state tax by simply excising the discriminatory portion. See S. Rep. 91-630, *supra*, at 12-13. The district court did not grant relief in this case, and this Court need not reach the issue of whether there would be any bar to a federal court's implementation of the remedial procedure that Section 306(1)(a) explicitly commands.

road property but also overvalues non-railroad property to a similar extent, there is no unlawful discrimination. Only if the state treats railroad and non-railroad property differently, and only if the margin of error exceeds 5%, does Section 306 compel a state to change its assessment practices or standards. Thus, contrary to the Tenth Circuit's view, federal courts will not, in the absence of an intent requirement for overvaluation claims, "sit as state tax assessment boards" (*Lennen*, 715 F.2d at 498) for each and every claim of error in the valuation process. The courts must instead confine relief to cases in which the valuation error discriminates against railroads, and does so to the statutorily defined degree.[14]

For all of these reasons, the intrusion on state tax collection that Section 306 calls for is much less substantial than the Tenth Circuit believed. Similarly, the burden that Section 306 places on federal courts is easily manageable. There are at most a few dozen reported decisions involving Section 306, even though the statute has been in effect for seven years, and even though no court of appeals except the Tenth Circuit has adopted an intent requirement to discourage the bringing of such lawsuits. Moreover, the determination of "true market value" for railroad property does not require the sort of tedious item-by-item investigation that the Tenth Circuit apparently envisioned. Under the "unit method" of valuation employed by Oklahoma (Pet. App. 8a) and most other states (see pages 14-15, *supra*), the worth of railroad property is determined by calculating the value of the entire railroad and then allocating a portion of the system value to the state. System value may in turn be

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[14] As we stated in our *Lennen* amicus brief (at 14-15), Section 306 applies "to overvaluations that result from an assessment rule or methodology that—either on its face or as applied—systematically determines excessive values for rail property. On the other hand, if a railroad, like any other state taxpayer, asserts only that the state made an error in reaching an excessively high value for its property, no relief for that overvaluation claim would be available under Section 306."

determined by such factors as capitalized earnings, adjusted original cost, or market price of stock and debt (see Pet. App. 8a). Proof of these factors does not require the court to engage in a time-consuming appraisal of the railroad's property, looking at each railyard, locomotive, and caboose one at a time; nor does it require any particular experience with local business or real estate conditions. To the contrary, a railroad's "system value" is typically established by standard accounting materials and expert testimony. The federal courts have previously reviewed such unit valuations in determining whether ad valorem property taxes violate the Due Process and Commerce Clauses of the Constitution. See, *e.g.*, *Norfolk & W. Ry.* v. *Missouri State Tax Comm'n*, 390 U.S. 317 (1968). Contrary to the implication of the Tenth Circuit (*Lennen*, 715 F.2d at 497), a similar investigation of "true market value" under the authority of Section 306 would not impose unmanageable burdens on the federal courts.

In sum, Congress clearly intended that federal district courts exercise equitable jurisdiction over all forms of de jure and de facto tax discrimination against railroads.[15] The Tenth Circuit's effort to alter the resulting

[15] In *Atchison, T. & S.F. Ry.* v. *Board of Equalization, supra*, the Ninth Circuit held that, although a claim of discriminatory overvaluation states a claim for relief under Section 306 without any showing of discriminatory intent, the district court should have abstained from exercising its jurisdiction pending completion of related state proceedings. See 795 F.2d at 1447. We understand that a petition for panel rehearing, confined to the abstention question, is still pending in that case. Because the Tenth Circuit in this case found no jurisdiction in the first instance, the court of appeals did not consider whether a district court should abstain from exercising its jurisdiction. We nonetheless note our agreement with the Eleventh Circuit's ruling (*Southern Ry.* v. *State Bd. of Equalization*, 715 F.2d 522, 529 (1983)) that Section 306 was "meant to guarantee a federal forum for railroad suits, and only an exemption from abstention in all its forms would accomplish this purpose." Congress clearly determined that federal remedies were needed to afford protection against discriminatory taxation, and that fact is

statutory balance of federal and state interests deprives the federal courts of the remedial power to end the burden on interstate commerce that prompted Congress to enact Section 306. The court of appeals' requirement of discriminatory intent is contrary to the plain meaning and purpose of the statute and seriously frustrates federal transportation policy. The decision should not be permitted to stand.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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sufficient to make abstention inappropriate. See *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 23, 26-28 (1983); *Fair Assessment in Real Estate Ass'n* v. *McNary*, 454 U.S. 100, 116 n.8 (1981).

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